Filed 1/26/10 Pelowski v. Pipe CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

KEN PELOWSKI et al., Plaintiffs and Appellants, v. SHARON PIPE, Defendant and Respondent.	A124157 (San Mateo County Super. Ct. No. 461377)

This is an appeal from the judgment of dismissal entered in favor of defendant Sharon Pipe after the trial court granted her motion to quash service of summons and then denied the plaintiffs' motion for reconsideration.[1] We conclude the trial court properly found that plaintiffs failed to meet their burden of demonstrating facts by a preponderance of evidence justifying the exercise of jurisdiction over Pipe in California, and thus affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In 1999, plaintiffs Pelowski, Lori Mirek, Gadi Maier and Eric Satz (collectively, plaintiffs/founders) founded a company called Fxtrades.com, Inc., later renamed

[1] Plaintiffs in this lawsuit are Ken Pelowski, individually and as trustee of the Pelowski/Mirek Living Trust and the Pelowski/Mirek Children's Trust; Lori Mirek, individually and as trustee of the Pelowski/Mirek Living Trust and the Pelowski/Mirek Children's Trust; Gadi Maier, individually and as trustee of the Gadi Maier and Marlene Maier Trust; Paul C. Maier, as trustee of the Dovave Ben-Zion Maier Trust, the Elan Michael Maier Trust, and the Avinoam Lev Maier Trust; and Joy Covey (collectively, plaintiffs).

Currenex, Inc. (Currenex). Currenex was incorporated in Delaware, but was headquartered and had its principal place of business in Menlo Park and Redwood City, California. Plaintiff Pelowski, a California resident, was an original member and Chairperson of the Board of Directors of Currenex (the Board). Plaintiff Mirek, a California resident, was Chief Executive Officer (CEO) and an original member of the Board. Plaintiff Maier was also a California resident and an original member of the Board.

Currenex's business model was to help large corporations, hedge funds, and other financial institutions transact foreign exchange over the Internet. The plaintiffs/founders originally funded the company with their own money, and received Series A Preferred Shares in return. Later, the plaintiffs/founders sought venture capital for Currenex from, among other sources, defendants TH Lee Putnam Ventures, L.P. and some of its managers and general partners (collectively, THLPV or TH Lee Putnam) and Shell Internet Ventures, B.V. (SIVBV), both of which ultimately provided millions of dollars in financing to Currenex and had representatives seated on the company's Board.[2]

On September 4, 2008, plaintiffs filed the Second Amended Complaint, the operative complaint in this lawsuit, in San Mateo County Superior Court, asserting causes of action for: (1) breach of fiduciary duty; (2) fraud and deceit; (3) abuse of control; (4) unjust enrichment; (5) constructive trust; (6) breach of written contract; and (7) breach of implied covenant of good faith and fair dealing. Specifically, plaintiffs alleged that, between 2002 and 2005, defendants engaged in a scheme designed to dilute plaintiffs' ownership interest in and to gain control of Currenex by first starving the company for cash and then forcing it to accept new rounds of financing at terms unfavorable to plaintiffs and other shareholders. For example, plaintiffs allege that

---

[2] Defendants named in this lawsuit are Shell Internet Ventures B.V.; TH Lee Putnam Internet Partners, L.P.; TH Lee Putnam Internet Parallel Partners, L.P.; THLi Coinvestment Partners, LLC; Blue Star I, LLC; TH Lee Putnam Internet Fund Advisors, L.P.; TH Lee Putnam Internet Fund Advisors, LLC; TH Lee Global Internet Managers, L.P.; TH Lee Putnam Fund Advisors, L.P.; TH Lee Putnam Fund Advisors, LLC; Michael Salmon; James Brown; Sharon Pipe; and Carlos Monfiglio.

defendants interfered with Currenex's efforts to raise outside capital, refused to consider or approve investment offers on more favorable terms from plaintiffs and other shareholders, failed to properly assess Currenex's fair market value, breached various financing agreements, and engaged in other acts of self-dealing while acting as Board members and controlling shareholders. As a result, plaintiffs alleged that defendants expropriated economic value and voting power in Currenex at their expense, culminating in Currenex's merger agreement with State Street Bank and Trust Company in 2007.[3]

Among the defendants named in this lawsuit is appellant Sharon Pipe, a citizen and resident of the United Kingdom who served as a director of Currenex from March 2003 until March 2007, and also held various positions with entities associated with TH Lee Putnam. On July 18, 2007, Pipe made a special appearance in this case and moved to quash service of process on the ground of lack of personal jurisdiction. Plaintiffs thereafter requested, and were granted, a continuance of the hearing on the motion to quash in order to conduct jurisdictional discovery.

The trial court initially stayed commencement of jurisdictional discovery, but then lifted the stay on April 7, 2008, at which time it encouraged the parties to move forward promptly with discovery so as to resolve whether Pipe would remain in the case.[4] Plaintiffs served their first request for production of documents relating to jurisdiction

---

[3] According to the complaint, defendants engaged in several rounds of so-called "cram down" financing with respect to Currenex during the relevant period of time. A "cram down" is the effort to wrest control away from the current owners of a company by manipulating the company's market value in order to devalue the owner's stock in the company. For example, it can occur when a company raises money by issuing stock shares at prices that are artificially low and thus not reflective of the company's fair market value. When this occurs, shareholders who previously acquired their shares at higher valuations have their ownership interests unfairly diluted in favor of new shareholders who acquire their shares at lower valuations during the new round of financing. Here, according to the complaint, defendants' repeated rounds of cram down financing resulted in a reduction in plaintiffs' ownership interest in Currenex from 50 percent to less than two percent.

[4] The trial court was also concerned with whether it could assert personal jurisdiction over another defendant, Michael Salmon, an issue that is the subject of a separate appeal and, thus, is addressed here no further.

five months later, on September 18, 2008, after Pipe notified them of her intent to schedule a hearing on a renewed motion to quash on November 17, 2008.

On October 21, 2008, Pipe thus renewed her motion to quash service of process on the ground of lack of personal jurisdiction. In support of her motion, Pipe submitted a declaration stating as follows. Pipe had been employed since January 2000 by TH Lee Putnam Ventures, Ltd., an entity incorporated in the United Kingdom that was not named as a defendant in this lawsuit. Pipe resided in the United Kingdom, where she was employed and educated, was registered to vote and to drive, and maintained all of her bank accounts. Pipe had never lived in California, never purchased, owned, or leased real property in California, and never maintained a bank account in California. In addition, Pipe had never operated a business, maintained an office or telephone number in California, and had never been an officer or director of a company incorporated in California. Pipe twice paid income taxes in California – both times prior to becoming a Currenex director – due to advisory services she provided for defendant TH Lee Global Internet Managers, L.P., a TH Lee Putnam entity that formerly had an office in San Francisco. Pipe never visited that entity's office in San Francisco, which closed two years before she joined Currenex's Board.

Pipe served as a director of Currenex from March 2003 until March 2007, by which time Currenex's management and governance had been moved outside California and the company had reduced its leased space in Menlo Park. Pipe had never been an officer or employee of Currenex. Nor had Pipe been a registered owner of Currenex shares, held options for Currenex shares, or received salary or other compensation from Currenex. All Board meetings in which Pipe participated occurred in New York, London or telephonically. Pipe had not travelled to California on Currenex business, visited Currenex's California offices, nor initiated direct contact of any kind with any of the plaintiffs who resided in California.

In addition, according to Pipe's declaration, she was not a director of Currenex when the Board took many of the actions that plaintiffs have challenged in this lawsuit. In particular, at least one of the alleged rounds of cram-down financing, as well as

plaintiffs' resignations as directors and officers of Currenex, occurred in late 2002, before Pipe joined the Board. In addition, after Pipe joined the Board, Pipe abstained from participating in the Board's votes (including discussions leading up to those votes) that related to the financing efforts that, according to the complaint, injured plaintiffs by diluting their interests in Currenex.[5] In doing so, Pipe disclosed that her position with TH Lee Putnam Ventures, Ltd., was the reason for her abstentions.

Pipe acknowledged that, before joining Currenex's Board, she was employed by defendant TH Lee Global Internet Managers, L.P., from June 2000 until March 2001. In addition, Pipe was a participant or "member" of defendants THLi Coinvestment Partners, LLC., and TH Lee Putnam Fund Advisors, LLC., as well as non-defendant TH Lee Global Internet Advisors, LLC. Pipe was a limited partner in defendants TH Lee Putnam Fund Advisors, L.P. and TH Lee Global Internet Managers, L.P.

Pipe was also one of five voting members of an investment committee that advised TH Lee Putnam Fund Advisors, L.P., which is the general partner of defendant TH Lee Putnam Ventures, L.P. Pipe was named to this committee because she was a managing director of TH Lee Global Internet Advisors, LLC., which is the general partner of defendant TH Lee Global Internet Managers, L.P., with whom her employer contracted to provide investment management services. Pipe was also one of five voting members of defendant TH Lee Putnam Fund Advisors, LLC., which is the general partner of defendant TH Lee Putnam Fund Advisors, L.P., and makes investment decisions on its behalf.

Finally, Pipe was an investor in defendant THLi Coinvestment Partners, LLC. Her investment represented about two percent of the total partnership funds. Pipe was aware that these partnership funds were invested in Currenex. When Currenex was purchased by State Street Bank and Trust Company in 2007, Pipe received proceeds from

---

[5] Pipe states that the reverse stock split referred to in paragraph 103 of the complaint that was approved by the Board in October 2005 did not dilute any shareholders' interests in Currenex.

the sale of the equity interest in Currenex through her investment in THLi Coinvestment Partners; however, Pipe did not have any personal or direct investment in Currenex.

In opposition to Pipe's renewed motion to quash, plaintiffs submitted declarations from Pelowski, Mirek, and one of their attorneys. According to statements set forth in those declarations, although Currenex was incorporated in Delaware, from its inception it was headquartered in California. From 1999 through 2003, all Board meetings were initiated from California, and much of the Board information was sent from California. All of Currenex's major business functions except for sales were based in California. Currenex's foreign exchange trading platform was developed in California, the servers required to run the platform were located in California, and all financial and foreign-exchange trading information were kept in California. All corporate bank accounts were based in California, and all checks were issued and bills were paid from those California accounts. Virtually all corporate contracts were executed under California law and had California notification addresses. Further, all major corporate records through March 2003 were located in California, and all major third-party services, including legal and accounting, were provided from California.

With respect to Pipe's alleged California contacts, Pelowski declared that, "[b]ased upon my meetings with employees from TH Lee Putnam, I knew that [she] was a managing director at TH Lee Putnam and was heavily involved in the decision-making process concerning Internet venture investments (such as Currenex) at TH Lee Putnam." "Subsequently, I met Sharon Pipe at a function in Las Vegas in February 2001. At that time, I understood that she was a managing director at TH Lee Putnam and that TH Lee Putnam had affiliates in San Francisco, California. Based on my meeting with Sharon Pipe in Las Vegas, I understood that Ms. Pipe was heavily involved in TH Lee Putnam's decisions regarding Currenex." Further, "[d]uring my time with Currenex, I understood that Sharon Pipe was involved with most of the TH Lee Putnam decisions regarding Currenex from prior to the initial investment by TH Lee Putnam in 2000 through the Currenex-State Street merger in 2007. Based on information and belief, I understood

Sharon Pipe to be a key person at TH Lee Putnam, who along with James Brown, was responsible for all TH Lee Putnam decisions regarding Currenex."

In connection with the Pelowski declaration, plaintiffs submitted the following documentary evidence: (1) copies of a Fifth Amended and Restated Voting Agreement, dated February 2004, that was signed by Currenex, by Pipe on behalf of TH Lee Putnam, and by Shell, and that directs that all notices for Currenex should be sent to the company's Menlo Park, California address; and (2) a copy of Currenex's Annual Franchise Tax Report from the years 2003, 2005 and 2006, each of which identifies Currenex's principal place of business as an address in California and identifies Pipe as a director of the company with an ongoing address in California.

Mirek's declaration, in turn, stated that Mirek understood Pipe was a managing director of TH Lee Putnam Internet Partners and that, "[b]ased on my corporate experience, managing directors are the top executive decision-makers and would have been involved in making all investment decisions at TH Lee Putnam Internet Partners." "Based upon my meetings with employees from TH Lee Putnam Internet Partners, I knew that Sharon Pipe was . . . heavily involved in the decision-making process at TH Lee Putnam Internet Partners. At that time, I understood that a Vice-president, Carlos Monfiglio, was at TH Lee Putnam Internet Partners' affiliate office in San Francisco, California. He represented TH Lee Putnam regularly at the Currenex Board meetings in person at our San Mateo County offices**.** Mr. Monfiglio received direction and instruction from Sharon Pipe . . . regarding any decisions made on behalf of TH Lee Putnam."

Mirek further declared that she met with Pipe in February 2000 in an unspecified location to discuss Currenex business. "During my time with Currenex, I understood that Sharon Pipe, as a managing director and a key part of TH Lee Putnam's management team, was involved with TH Lee Putnam Internet Partners' decisions regarding Currenex throughout the investment by TH Lee Putnam Internet Partners."

Mirek's declaration also described, but did not attach thereto, a Private Placement Memorandum that she recalled receiving in February 2001 explaining the TH Lee

venture capital business model. To the best of Mirek's recollection, this memorandum stated, among other things, that TH Lee Putnam sought to capitalize on investment opportunities in the United States and abroad, that it would have affiliates in San Francisco, and that Pipe was one of its managing directors.

Finally, the declaration from plaintiffs' attorney in support of their opposition to the motion to quash attached the following documentary evidence that was received as part of Pipe's response to jurisdictional discovery requests: (1) an email string, dated October 11, 2004, in which Pipe is a recipient of a message from Rodney Yoshida, Currenex's Chief Administrative Officer, regarding the terms of a lease on the company's California premises; (2) an email string from April 2005 in which Pipe is a recipient of a message from the vice-president of a company based in California, who requests to speak with Pipe about "get[ting] involved with Currenex"; and (3) an email string from June 2006, in which a message was sent to Pipe from Yoshida requesting her advice "on the best approach . . . on a deal structure" with another company whose location was not mentioned.

In conjunction with her reply memorandum, Pipe filed evidentiary objections to the statements in the Mirek and Pelowski declarations relating to Pipe's alleged role with TH Lee Putnam and related entities on the ground that the statements constituted hearsay and/or were not based on personal knowledge. She also filed evidentiary objections to the documents attached to the Pelowski declaration (with the exception of the Fifth Amended and Restated Voting Agreement) on the ground that they were not properly authenticated, and to Mirek's statements regarding the Private Placement Memorandum on the ground that the document itself, the best evidence, was not attached.

Plaintiffs filed no response to Pipe's evidentiary objections and, following a hearing on November 17, 2008, the trial court granted Pipe's motion and sustained all of the objections.[6]

---

[6] Consistent with the parties' agreement, Pipe confirmed to plaintiffs that her document production with respect to jurisdictional discovery was complete on November 4, 2008.

Plaintiffs thereafter moved for reconsideration based on the purported existence of new evidence. (Code of Civ. Proc., § 1008.) In doing so, plaintiffs relied upon several documents received from Pipe on November 6 and 26, 2008, during jurisdictional discovery. These documents included in particular, a letter from the Board signed by Pipe, to Currenex's CEO, Clifford Lewis, that clarified the terms of his employment, and several emails sent from Pipe to Currenex's CFO, Bruce Carmadelle, in 2003.

The trial court denied plaintiffs' motion for reconsideration on the ground that the evidence supporting it was not "new" or "different" within the meaning of Code of Civil Procedure section 1008. In particular, plaintiffs acknowledged receiving the 2003 emails from Pipe to Carmadelle on November 6, 2008, 11 days before the hearing on her renewed motion to quash. While plaintiffs had already filed their opposition papers by that time, they nonetheless could have brought the documents to the court's attention at the hearing. In addition, the Board's letter to Lewis was produced to plaintiffs on approximately October 17, 2008, a month before the hearing and nearly two weeks before plaintiffs filed their opposition papers. Moreover, the trial court noted that even if this evidence could be considered new or different, plaintiffs had not demonstrated why, with reasonable diligence, it could not have been discovered or produced at the time of the hearing, particularly given plaintiffs' decision to wait five months once the stay was lifted to commence jurisdictional discovery.

Judgment of dismissal in favor of Pipe was thus entered on January 14, 2009. Plaintiffs timely appealed.

DISCUSSION

On appeal, plaintiffs seek reversal of the judgment dismissing Pipe from this case ─ on the ground that the trial court erred in finding she had insufficient contacts with California to warrant subjecting her to personal jurisdiction. In addition, plaintiffs contend the trial court erred in denying their motion for reconsideration after finding there was no new or different evidence supporting it. In considering plaintiffs' contentions, the following legal principles are relevant.

"[T]he state has a legitimate interest as sovereign in providing its residents with protection from injuries caused by nonresidents and with a forum in which to seek redress." (*Vons Companies, Inc. v. Seabest Foods, Inc*. (1996) 14 Cal.4th 434, 473 (*Vons*).) Accordingly, "California's long-arm statute authorizes California courts to exercise jurisdiction on any basis not inconsistent with the Constitution of the United States or the Constitution of California. (Code Civ. Proc., § 410.10.) A state court's assertion of personal jurisdiction over a nonresident defendant who has not been served with process within the state comports with the requirements of the due process clause of the federal Constitution if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate ' " 'traditional notions of fair play and substantial justice.' " ' (*International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 [90 L.Ed. 95, 102, 66 S.Ct. 154, 161 A.L.R. 1057 (*International Shoe*); see also *Burnham v. Superior Court* (1990) 495 U.S. 604, 618-619 [109 L.Ed.2d 631, 644-645, 110 S.Ct. 2105] (*Burnham*).)" (*Vons, supra,* 14 Cal.4th at pp. 444-445.)

Under this "minimum contacts" standard, it is essential that the nature and quality of the defendant's activity is such that it would be " 'reasonable' and 'fair' " to require the defendant to defend itself in the State. (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268.) Further, "to the extent that a [defendant] exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the [defendant] to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." (*International Shoe, supra,* 326 U.S. at p. 319.)

Courts have identified two types of personal jurisdiction – general and specific jurisdiction. Here, plaintiffs allege Pipe is subject to general *and* specific jurisdiction. Accordingly, we set forth the principles relevant to both types.

General jurisdiction exists over a nonresident defendant if his or her contacts in the forum state are " 'substantial . . . continuous and systematic.' " (*Vons, supra,* 14 Cal.4th at p. 445; see also *Helicopteros Nacionales de Colombia, S.A. v. Hall* (1984) 466

U.S. 408, 414-415 (*Helicopteros*).) For general jurisdiction to exist, "it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum." (*Vons, supra*, 14 Cal.4th at p. 445.)

If, however, a defendant has insufficient contacts with the forum state to be subject to general jurisdiction, he or she may nonetheless be subject to specific jurisdiction. In determining whether specific jurisdiction exits, courts look to the relationship among the defendant, the forum, and the litigation. (*Helicopteros, supra,* 466 U.S. at p. 414; *Pavlovich, supra,* 29 Cal.4th at p. 269.) Specifically, "[a] court may exercise specific jurisdiction over a nonresident defendant only if: (1) 'the defendant has purposefully availed himself or herself of forum benefits' (*Vons, supra*, 14 Cal.4th at p. 446); (2) 'the "controversy is related to or 'arises out of' [the] defendant's contacts with the forum" ' (*ibid.*, quoting *Helicopteros, supra,* 466 U.S. at p. 414 [104 S.Ct. at p. 1872]); and (3) ' "the assertion of personal jurisdiction would comport with 'fair play and substantial justice' " ' (*Vons, supra*, 14 Cal.4th at p. 447, quoting *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 472-473 [105 S.Ct. 2174, 85 L.Ed.2d 528] (*Burger King*).)" (*Pavlovich, supra*, 29 Cal.4th at p. 269.)

Applying these principles, we thus turn to the facts of this case, keeping in mind that, when a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of proving, by a preponderance of the evidence, facts warranting the court's exercise of jurisdiction.[7] (*Vons, supra,* 14 Cal.4th at p. 449; *Anglo Irish Bank Corp., PLC v. Superior Court* (2008) 165 Cal.App.4th 969, 980 (*Anglo Irish Bank).*) If the plaintiff meets this burden, the burden then shifts to the defendant to demonstrate that the exercise of jurisdiction would be unreasonable. (*Ibid.*)

When the evidence is conflicting, we will not set aside the trial court's factual determinations so long as they are supported by substantial evidence. (*Anglo Irish Bank, supra,* 165 Cal.App.4th at p. 980.) Where there is no conflict in the evidence, the issue is one of pure law, and we thus independently review the record to determine whether the

---

[7] The merits of the complaint are not at issue at this stage of the proceedings. (*In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 110.)

exercise of jurisdiction over the defendant is proper. (*Vons, supra,* 14 Cal.4th at p. 449.) Further, we must keep in mind that "[courts] are even more cautious in [the] application of the law of personal jurisdiction when the nonresident defendant is from another nation rather than another state. [Citations.] When the defendant is from a foreign nation, a high barrier of sovereignty tends to undermine the reasonableness of exercising personal jurisdiction in this state. [Citation.]" (*In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 109-110 (*In re Automobile*).)

A. General Jurisdiction.

Consistent with the principles set forth above, we thus first consider whether Pipe has the requisite "substantial, continuous, and systematic contacts" with California to support a finding of general jurisdiction. (*Vons*, *supra,* 14 Cal.4th at p. 445.)

According to the undisputed evidence, Pipe has never been a California citizen, resident, or domiciliary. Pipe has never purchased, owned, or leased real property in California. Nor has she operated a business, maintained a telephone number, or opened a bank account in California. In fact, Pipe has visited the State only five times since 1999, and never for Currenex business.

Plaintiffs nonetheless claim a basis for general jurisdiction exists because: (1) Pipe paid income tax to the State of California in 2000 and 2001; (2) Pipe visited California in 2006; (3) Pipe knowingly communicated regularly with people in California via email; (4) Pipe received income from the sale of Currenex; and (5) Pipe identified a California address as her principle place of business in 2003, 2005 and 2006. We address each of these claims below.

We first consider plaintiffs' claim that Pipe "communicated regularly with persons in California via email." As plaintiffs point out, for purposes of personal jurisdiction, a nonresident defendant need not have been physically present in the forum state, so long as the defendant otherwise made sufficient contacts in that state, such as by mail, telephone or electronic communication. (*Burger King*, *supra*, 471 U.S. at p. 476 ["it is an inescapable fact of modern commercial life that a substantial amount of business is

transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted"].)

Here, we have identified three strings of email communications associated with California in which Pipe was a participant. First, in a series of communications dated October 11, 2004, Pipe received an email from Rodney Yoshida, Currenex's Chief Administrative Officer, that discusses the terms of a lease on Currenex's California premises. On the same day, Pipe then forwarded the email to a person identified as Yann Gueziec with the following note: "Fyi re Currenex's new facilities in San Fran."

In another series of communications in April 2005, Pipe received an email from the vice-president of a company based in California, who requests to discuss "get[ting] involved with Currenex" with Pipe. Without responding directly, Pipe forwarded the email to Clifford Lewis of Currenex, stating, among other things, that she would "make contact" with the sender.[8]

Finally, in a third series of communications in June 2006, Yoshida sent Pipe an email requesting her advice "on the best approach . . . on a deal structure" with another company. Pipe responded that she was "travelling in California at the moment so will find it hard to look at this today," but that she would meet with Yoshida the next day in New York to discuss the matter.

Having considered this evidence, we conclude none of these emails establishes that Pipe made contact with persons in California, much less that she maintained substantial, continuous and systematic contacts with persons in California. In particular, the emails nowhere state that the recipients of Pipe's responses – Yann Gueziec, Rodney Yoshida and Clifford Lewis – were in fact located in California, or that Pipe believed they were located in California. Moreover, Pipe stated in her declaration that both Lewis and Yoshida were based in New York throughout her involvement with Currenex. No evidence disproves her statement. And while Pipe indicated in her message to Lewis that she would "make contact" with a corporate vice-president located in California, there is

---

[8] This email is discussed in more detail below, in our discussion of specific jurisdiction. (pp. 18-19, *post*.)

no evidence that she in fact did so. Even if she did, a lone contact with a California-based individual does not prove plaintiffs' claim that Pipe "communicated regularly with persons in California via email."

We thus turn to plaintiffs' next claim that Pipe "identified a California address as her principal place of business in 2003, 2005 and 2006." In making this claim, plaintiffs rely on Currenex's Annual Franchise Tax Reports for the years 2003, 2005 and 2006 (the tax reports), which identify Currenex's principal place of business as an address in California and identify Pipe as a director of the company with an ongoing address in California. However, as set forth in the procedural and factual background, above, the trial court excluded evidence of those tax reports after sustaining Pipe's objection on the ground that the reports were not properly authenticated. Plaintiffs did not appeal the trial court's ruling, thereby precluding us from considering this evidence here.[9]

Finally, we address plaintiffs' claims that general jurisdiction exists based on Pipe's payment of income tax in California in 2000 and 2001, her visit to California in 2006, and her receipt of income from the sale of Currenex in 2007.

Pipe admitted paying income taxes to the State of California in 2000 and 2001, explaining that such payments were made because she provided advisory services to a TH Lee Putnam entity that, at one time, had an office in San Francisco. However, according to her declaration, Pipe never worked at or visited the entity's San Francisco office, which closed two years before she joined Currenex's Board. Pipe also visited California in 2006 (as well as four other times since 1999); however, she remained in California only one day during the 2006 visit and did not engage in Currenex business. Further, when Currenex was purchased in 2007, Pipe acknowledged receiving proceeds

---

[9] In their reply brief, plaintiffs further point out that Currenex circulated a document entitled "Fifth Amended and Restated Voting Agreement" in February 2004, which identified the company's principal place of business as Menlo Park, California, and contained Pipe's signature. As Pipe responds, however, there is no evidence that she was involved in the company's circulation of this document, or that the document in any other way demonstrates that she had substantial, continuous, and systematic contacts in California.

from the sale of the equity interest in Currenex through her investment in THLi Coinvestment Partners. However, Pipe attested that her investment in THLi Coinvestment Partners represented only about two percent of total partnership funds, and she had no personal or direct investment in Currenex.

Having considered this evidence collectively, we conclude that these minimal contacts with the State of California — to wit, Pipe's two payments of income tax, a brief visit, and one receipt of income based on an indirect investment — are not sufficiently substantial, continuous, or systematic to support a finding of general jurisdiction. (*Vons, supra,* 14 Cal.4th at p. 445.) As our Supreme Court has explained, the general jurisdiction standard requires a defendant's contacts with the forum to be "*so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction*." (*Id*. at p. 446 [italics added].) Here, Pipe's four contacts, which span over seven years, are not wide-ranging, but rather, largely insubstantial and sporadic. Accordingly, the trial court properly found insufficient evidence to subject Pipe to general jurisdiction in California. (*Jewish Defense Organization, Inc. v. Superior Court* (1999) 72 Cal.App.4th 1045, 1057 [no basis for general jurisdiction existed where the defendants' only contacts with California after 1989 consisted of (1) the use of the mail to send documents to California in connection with another lawsuit, and (2) contracting with one or more Internet service providers who happen to be located in California]; *Boaz v. Boyle & Co*. (1995) 40 Cal.App.4th 700, 715, 717 [no basis for general jurisdiction existed where defendants engaged in targeted, nationwide mailings to physicians (including some in California) and advertised primarily in national publications, but maintained no personnel, offices, accounts or records in California, and were not licensed to do business in California].)

We thus turn to the issue of specific jurisdiction, which, as set forth above, may nonetheless exist. (*Pavlovich, supra,* 29 Cal.4th at p. 269.)

B. Specific Jurisdiction.

As discussed above, when considering whether specific jurisdiction exists, we consider those " 'forum-related activities as they relate to the specific cause of action.'

[Citation.]" (*Jewish Defense Organization, Inc. v. Superior Court, supra,* 72 Cal.App.4th at p. 1058.) Here, plaintiffs claim specific jurisdiction exists because: (1) Pipe purposefully availed herself of the benefits and protection of California law by conducting business in the state related to Currenex; (2) the alleged conspiracy by defendants to unlawfully gain control of Currenex is related to or arises out of Pipe's contacts with California, such that there is "a *substantial connection* between the forum contacts and the plaintiff[s'] claim" (*Vons, supra*, 14 Cal.4th at p. 452); and (3) exercising personal jurisdiction over Pipe would be reasonable.

In support of these contentions, plaintiffs rely upon some of the same "contacts" that they relied upon in seeking to prove general jurisdiction. Specifically, plaintiffs claim that Pipe: (1) identified California as her principle place of business three times in four years; (2) knowingly communicated with people in California via email on behalf of THLPV and Currenex; (3) worked on Currenex and THLPV business; and (4) attended Board meetings via telephone while serving as a Currenex director. For reasons set forth below, we conclude plaintiffs' showing is again insufficient to establish jurisdiction over Pipe.

We first consider whether Pipe purposefully availed herself of the privileges of doing business in California, one of the three prerequisites for proving specific jurisdiction. " 'The purposeful availment inquiry . . . focuses on the defendant's intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily directs his activities toward the forum so that he should expect, by virtue of the benefit he receives, to be subject to the court's jurisdiction based on' his contacts with the forum. [Citation.] Thus, the ' "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts [citations], or of the "unilateral activity of another party or a third person." [Citations.]' (*Burger King, supra*, 471 U.S. at p. 475 [105 S.Ct. at p. 2183].)" (*Pavlovich, supra,* 29 Cal.4th at p. 269.)

There is no mechanical test for determining whether a defendant has purposefully availed himself or herself of the benefits of doing business in California. (*Vons, supra,*

14 Cal.4th at p. 450; *Burger King, supra,* 471 U.S. at p. 478.) Rather, a flexible approach must be adhered to, with the court considering all relevant factors regarding the relationship between the claim and the forum contacts, including, among others, the parties' dealings with each other and the future consequences of those dealings in California. (*Ibid.*; see also *Pavlovich, supra,* 29 Cal.4th at p. 269.)

Applying this approach here, we turn to the fact that Pipe served as a director on Currenex's Board. According to plaintiffs, this fact demonstrates Pipe's purposeful availment of forum benefits. Plaintiffs disregard, however, the fact that, according to Pipe's declaration, all Board meetings in which she participated occurred in New York, London or telephonically. None occurred in California. Moreover, Pipe never travelled to California on Currenex business, never visited Currenex's California offices, and never initiated direct contact with any of the plaintiffs who resided in California.[10] Under these circumstances, Pipe's presence on the Board does not prove that she purposefully availed herself of the benefits of doing business in California. (*Thomson v. Anderson* (2003) 113 Cal.App.4th 258, 271 [individual directors of the defendant company were not subject to personal jurisdiction where there was no evidence they conducted business in California on the company's behalf or communicated on its behalf with anyone in California].)

We next revisit plaintiffs' claim that Pipe identified her principle place of business as California in 2003, 2005 and 2006. Without rehashing what we have already explained, the basis for this claim is Currenex's Annual Franchise Tax Reports for the years 2003, 2005 and 2006, which the trial court excluded from evidence, and thus cannot be relied upon here to support a finding of specific jurisdiction.

Plaintiffs also seek to rely again on the series of emails between Pipe and other individuals that were discussed above. Plaintiffs insist these emails prove that specific jurisdiction exists because Pipe "regularly communicated" with persons in California regarding Currenex. We disagree with plaintiffs' conclusion. Again, without wholly

---

[10] In addition, Pipe has never been an officer or employee of Currenex, nor has she been a registered owner of Currenex shares, held options for Currenex shares, or received salary or other compensation from Currenex.

rehashing our prior discussion, we reiterate there is no evidence in the record that the recipients of Pipe's messages – Yann Gueziec, Rodney Yoshida and Clifford Lewis – were in fact located in California, much less that Pipe knew they were located in California. Moreover, Pipe stated in her declaration that both Lewis and Yoshida were based in New York throughout her involvement with Currenex. Plaintiffs point to no contradictory evidence.

With respect to the email Pipe received in April 2005 from the vice-president of a California-based company, a closer examination is perhaps necessary. This individual, who identified his location as California, requested the opportunity to talk to Pipe, explaining that "we spent a lot of time with . . . the team in NY with the [redacted] transaction and we have recently started discussions with Cliff [Lewis, Currenex CEO] and Rod about ways to get involved with Currenex." Upon receiving this email, Pipe did not respond directly to the individual in California; rather, she forwarded it to Lewis, who was located in New York. In doing so, Pipe advised Lewis that she would "make contact" with the California-based individual to "prep him for our plan (recap at huge valuation and take over world aka EBS) and [to] tell him we will have the banker we select contact him . . . ."

According to plaintiffs, the "plan" referenced by Pipe in the email relates to defendants' alleged conspiracy to gain control of Currenex, and is evidence that Pipe directed tortious conduct at California. However, the trial court refused to draw any such inference. We agree. The email is vague at best regarding this "plan." In particular, neither the email nor any other evidence in the record establishes that the "plan" involved Currenex or any other California entity. Rather, the evidence merely reflects interest –by an individual not named as a defendant in this lawsuit —in getting involved with Currenex. As such, because we conclude the trial court's decision in this regard is supported by substantial evidence, we decline to disturb it on appeal. (*In re Automobile, supra,* 135 Cal.App.4th at pp. 113-114 [the trial court was not required to draw an inference in favor of jurisdiction from certain evidence that could possibly support an inference that the defendant was involved in the alleged conspiracy because such

requirement would impermissibly "lighten plaintiffs' burden of proof of jurisdictional facts"]; see also *CenterPoint Energy, Inc. v. Superior Court* (2007) 157 Cal.App.4th 1101, 1119.)

As the trial court apparently noted, there is no evidence that Pipe in fact contacted this individual in California. Moreover, the individual's email referred to time spent with "the team" in New York, not California. This is consistent with Pipe's assertion in her declaration that, by 2005, when this email was sent, Currenex's management and governance had been moved outside California to New York. Under these circumstances, we accept the trial court's implied conclusion that this email failed to prove Pipe purposefully availed herself of benefits under California law. As the California Supreme Court has explained, "merely asserting that a defendant knew or should have known that his intentional acts would cause harm in the forum state is not enough to establish jurisdiction . . . . [Citations.] Instead, the plaintiff must also 'point to contacts which demonstrate that the defendant *expressly aimed* its tortious conduct at the forum . . . .' [Citation.]" (*Pavlovich, supra,* 29 Cal.4th at pp. 270-271. See also *Wolfe v. City of Alexandria* (1990) 217 Cal.App.3d 541, 547 ["the fact that a defendant's actions in some way set into motion events which ultimately injured a California resident" cannot, by itself, support the assertion of jurisdiction over the defendant].) Here, no such evidence exists.

In any event, we note that specific jurisdiction is based upon the principle that " 'parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to regulation and sanctions in the other State for the consequences of their activities.' " (*Burger King*, *supra*, 471 U.S. at p. 473.) A single email from Pipe to an individual in New York indicating that she would contact an individual in California regarding Currenex business is not evidence that she created "continuing relationships and obligations with citizens of [California]." (*Ibid.*)

Finally, we consider plaintiffs' claim that "[Pipe] was a THLPV managing director and was involved in all investment and management decisions regarding Currenex," thereby subjecting her to specific jurisdiction. Relevant to this claim, Pipe acknowledged

the following with respect to her involvement with the THLPV defendants: (1) she was employed by defendant TH Lee Global Internet Managers, L.P., from June 2000 until March 2001 (before joining Currenex's Board); (2) she was a participant or "member" of defendants THLi Coinvestment Partners, LLC. and TH Lee Putnam Fund Advisors, LLC.; (3) she was a limited partner in defendants TH Lee Putnam Fund Advisors, L.P. and TH Lee Global Internet Managers, L.P.; (4) she was one of five voting members of an investment committee that advised TH Lee Putnam Fund Advisors, L.P., which is the general partner of defendant TH Lee Putnam Ventures, L.P.; and (5) she was one of five voting members of defendant TH Lee Putnam Fund Advisors, LLC., which is the general partner of defendant TH Lee Putnam Fund Advisors, L.P., and makes investment decisions on its behalf.

We accept plaintiffs' assertion that this evidence demonstrates Pipe was involved in certain investment decisions made by the various THLPV entities. However, this evidence, without more, does not prove what the law requires – that Pipe was personally involved in the particular investment decisions implicated in this case (to wit, those decisions relating to defendants' alleged conspiracy to gain control of Currenex and to dilute plaintiffs' interests therein). Specifically, that Pipe was a voting member of an investment committee that advised the general partner on investment decisions does not establish that she voted or engaged in acts that implicate her in a conspiracy to dilute shares of stock held by plaintiffs. As such, Pipe's role as voting member of an investment committee provides no basis for this court's assumption of jurisdiction over her. (*In re Automobile, supra,* 135 Cal.App.4th at p. 110 ["[t]he jurisdictional facts shown must pertain to each separate nonresident defendant, even in a case alleging a conspiracy"]; *Kaiser Aetna v. Deal* (1978) 86 Cal.App.3d 896, 901 ["[t]he *acts* of other parties therefore cannot be imputed to respondents for the purpose of assuming personal jurisdiction over them"]. See also *Goehring v. Superior Court* (1998) 62 Cal.App.4th 894, 904 ["jurisdiction over a partnership does not necessarily permit a court to assume jurisdiction over the individual partners"].)

In their declarations opposing Pipe's motion to quash, Pelowski and Mirek made several statements relating to Pipe's alleged personal involvement in a conspiracy by defendants to gain control of Currenex through the financing and valuation process. For example, Pelowski asserted that "based upon my meetings with employees from TH Lee Putnam, I knew that [she] was a managing director at TH Lee Putnam and was heavily involved in the decision-making process concerning Internet venture investments (such as Currenex) at TH Lee Putnam." Similarly, Mirek asserted: "During my time with Currenex, I understood that Sharon Pipe, as a managing director and a key part of TH Lee Putnam's management team, was involved with TH Lee Putnam Internet Partners' decisions regarding Currenex throughout the investment by TH Lee Putnam Internet Partners."

However, as mentioned above, the trial court excluded all statements in the Pelowski and Mirek declarations relating to Pipe's alleged involvement in investment decisions regarding Currenex on grounds of hearsay and lack of personal knowledge. Accordingly, those statements cannot factor into our analysis on appeal. (See *Thomson v. Anderson, supra,* 113 Cal.App.4th at p. 271 [an unverified complaint has no evidentiary value in meeting the plaintiff's burden to prove the basis for exercising specific jurisdiction]; *In re Automobile, supra,* 135 Cal.App.4th at p. 110 ["Declarations cannot be mere vague assertions of ultimate facts, but must offer specific evidentiary facts permitting a court to form an independent conclusion on the issue of jurisdiction"]; *Pavlovich, supra,* 29 Cal.4th at p. 275, fn. 4 [an "unsubstantiated allusion" to a letter not contained in the record "cannot support a finding of jurisdiction"].)

Thus, while the remaining evidence in the record may prove that Pipe was involved with the investment decisions of the THLPV defendants, who were allegedly involved in a conspiracy to gain control of Currenex in California, the evidence does not prove that Pipe was *individually involved* with the THLPV defendants' alleged misconduct, or that she otherwise *expressly aimed* her tortious conduct at California. Accordingly, we cannot conclude that Pipe purposefully availed herself of the benefits of doing business in California. (*Pavlovich, supra,* 29 Cal.4th at pp. 270-271; *Thomson v.*

Anderson, supra, 113 Cal.App.4th at p. 271. Cf. *Anglo Irish Bank, supra,* 165 Cal.App.4th at pp. 981, 984 [finding purposeful availment where individuals acting on behalf of the defendant corporate entities attended meetings relating to the alleged fraudulent transactions and handed out business cards in California]; *Quattrone v. Superior Court* (1975) 44 Cal.App.3d 296, 306 [finding purposeful availment where an individual, non-resident defendant, acting as controller of the codefendant, a Pennsylvania corporation, prepared and submitted false financial documents allegedly designed to cause the plaintiff, a California corporation, to issue additional shares].)

Further, because plaintiffs failed to prove that Pipe purposefully availed herself of forum benefits, no basis exists for exercising specific jurisdiction over her. We thus need not address plaintiffs' remaining arguments that a substantial connection exists between Pipe's forum contacts and their claims, and that asserting jurisdiction over Pipe would comport would fair play and substantial justice. (*Pavlovich, supra,* 29 Cal.4th at p. 278; *Vons, supra,* 14 Cal.4th at p. 452.) Based on the record at hand, the trial court properly granted Pipe's motion to quash service of process.

C. Denial of Motion for Reconsideration.

Remaining for our consideration is plaintiffs' alternative contention that the trial court erred by denying their motion for reconsideration of its ruling on Pipe's motion to quash.

"[Code of Civil Procedure] section 1008, subdivision (a) requires that a motion for reconsideration be based on new or different facts, circumstances, or law. A party seeking reconsideration also must provide a satisfactory explanation for the failure to produce the evidence at an earlier time. [Citation.] A trial court's ruling on a motion for reconsideration is reviewed under the abuse of discretion standard."[11] (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212 (*New York Times*).)

---

[11] Code of Civil Procedure section 1008, subdivision (a), provides in relevant part: "When an application for an order has been made to a judge, or to a court, and . . . granted . . . any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and *based upon new or different facts,*

Here, plaintiffs contend their motion for reconsideration should have been granted because Pipe produced new sets of documents relevant to the personal jurisdiction issue on November 6, 2008, after their opposition to her motion to quash was due, and on November 26, 2008, after the hearing on her motion was held. The trial court rejected plaintiffs' argument, reasoning that none of the evidence offered in support of their motion was new or different within the meaning of Code of Civil Procedure section 1008. In particular, the trial court found that the documents received by plaintiffs on November 6, 2008 – several emails sent by Pipe to Currenex CFO, Bruce Carmadelle, in 2003 – were not new or different because they could have been brought to the court's attention at the hearing on Pipe's motion to quash, held November 17, 2008. Further, the document received by plaintiffs on November 26, 2008 – a letter from the Board to Currenex's CEO, Clifford Lewis – was not new or different because it was previously produced to plaintiffs as part of merits discovery on October 17, 2008, a month before the hearing on Pipe's motion to quash and nearly two weeks before plaintiffs filed their opposition papers.

We agree with the trial court's reasoning and decision. "The burden under [Code of Civil Procedure] section 1008 is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial. (*Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1198 [69 Cal.Rptr.2d 592].)" (*New York Times, supra,* 135 Cal.App.4th at pp. 212-213.) Here, as the trial court found, the evidence offered in support of plaintiffs' motion for reconsideration was available to plaintiffs before the hearing on Pipe's motion to quash. Moreover, plaintiffs have given no explanation as to why they could not have brought this evidence to the attention of the trial court at the time of the hearing, if not earlier. At the very least,

---

circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown." (Italics added.)

plaintiffs should have requested a continuance of the hearing upon receiving the additional documents to allow more time to review them and gauge their relevance. (*HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160, 1173 ["A trial court has the discretion to continue the hearing on a motion to quash service of summons for lack of personal jurisdiction to allow the plaintiff to conduct discovery on jurisdictional issues"].) Having failed to do so, the trial court acted within its discretion in denying the motion for reconsideration. (*New York Times, supra,* 135 Cal.App.4th at p. 215 [holding that evidence was not new or different within the meaning of Code of Civil Procedure section 1008 where it was revealed in depositions held two business days before the hearing, and noting that the moving party could have moved for a continuance in order to present the deposition transcripts to the court if they were not ready at the time of the hearing]; *Jade K. v. Viguri* (1989) 210 Cal.App.3d 1459, 1464, 1467 [affirming the denial of a motion for reconsideration where the moving party made no showing that the purported new evidence was newly discovered after the date of the hearing or that, with reasonable diligence, it could not have been discovered before the hearing].)

Accordingly, there is no basis for reversing the trial court's decision.

DISPOSITION

The judgment is affirmed. Defendant Pipe shall recover costs on appeal.

_____
Jenkins, J.

We concur:

_____
McGuiness, P. J.

_____
Siggins, J.